

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4203 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KARSANBHAI AMARABHAI RABARI

Versus

MATHURBHAI KARABHAI VASAVA & ORS.

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Appearance:

MR DN PANDYA for Petitioner

None present for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/12/96

ORAL JUDGEMENT

1. Challenge is made by the petitioner in this Special Civil Application to the order of the Gujarat Revenue Tribunal made in Revision Application No.TEN.B.A.226/85 on 7-6-1988. Before the Tribunal, the counsel who was appearing for the petitioner submitted a purshis on 9-4-1987 that Mathurbhai Karabhai Vasava has died on 2-7-1985. He has also produced death certificate to show that the aforesaid person has died on the

aforesaid date. Deceased Mathurbhai Karabhai Vasava was applicant before the Tribunal. The counsel for the other side (the petitioner herein) raised an objection that as per Rule 24 of the Bombay Revenue Tribunal Procedure Rules, 1959, the legal heirs of deceased have to be made parties to the proceedings, but no such application was received within prescribed period of 90 days and as such, the revision application is abated. On 7-1-1988, an application was filed on behalf of the legal heirs of Mathurbhai Karabhai Vasava by the advocate Shri I.A. Pathan. The said application was accepted by the Tribunal and the abatement has been ordered to be set aside. The legal heirs of deceased Mathurbhai Karabhai Vasava were ordered to be substituted as applicants. This order is challenged by the petitioner by this petition.

2. The counsel for the petitioner contended that the Tribunal has exceeded its jurisdiction in setting aside the abatement. It has next been contended that the respondents have not filed a separate application for setting aside of the abatement. It has last been contended that the application has not been filed within time and no ground much less a sufficient ground has been given for condonation of delay. The Tribunal has committed serious illegality in condoning the delay in filing of the application and setting aside the abatement. Reliance is placed by the counsel for the petitioner in support of his contention on the decision of this court in the case of Amritlal vs. Siddiq Ismail reported in 24 GLR 1305 as well as of Supreme Court in the case of Union of India vs. Ramcharan reported in AIR 1964 SC 215 and in the case of Rangubai vs. Sunderbai reported in AIR 1965 SC 1794.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

4. There is no dispute that the application has been filed in this case on 7-1-1988 for bringing on record the legal heirs of deceased Mathurbhai Karabhai Vasava. The court asked to the counsel for the petitioner that in the application submitted by the legal representatives of the deceased applicant before the Tribunal on 7-1-1988, whether any prayer for setting aside of the abatement has been made or not, but the counsel for the petitioner has not given any reply on the ground that the application is not available with him. From the judgment of the Tribunal it transpires that the applicants (legal heirs

of deceased Mathurbhai Karabhai Vasava) have come up with a case that they are illiterate persons and are adivasis staying in the remote rural area. The applicants have further stated that deceased Mathurbhai Karabhai Vasava who was also an illiterate adivasi had never informed them about the revision application filed by him before the Tribunal. It has further been stated by the applicants that they came to know about the pendency of the revision application only when Ibrahim A. Khatri, advocate, wrote to them on 15-12-1987 that their father had filed an revision application and on his death his legal heirs should be joined as a party to the proceedings. Thereafter the applicants filed application as mentioned above, in which the reasons have been given out for delay made in filing of the application. In these facts, the Tribunal has considered it to be a case where delay in filing of the application should be condoned and abatement has to be set aside. In the presence of these facts which are not controverted, a just and reasonable order has been passed by the Tribunal.

5. The petitioner's counsel has made a technical approach in the matter. The contention of the counsel for the petitioner that without there being an application filed for setting aside of the abatement, the abatement could not have been set aside, is devoid of any substance. In the matter of illiterate adivasis who are residing in remote rural area, it is difficult and undesirable to expect from them to have the knowledge of all these litigations as well as the legal position. There is nothing on record, brought from the side of the petitioner, to show that the legal heirs of the deceased Mathurbhai Karabhai Vasava had any knowledge or the notice of pendency of revision application before the Tribunal earlier to the date of knowledge as pleaded. In view of these facts, the delay which was there in filing of the application for bringing on record the legal heirs of the deceased applicant can hardly be said to be a culpable delay or hardly it can be said to be a case of negligence.

6. The counsel for the petitioner has raised an objection that separate application should have been filed for setting aside of the abatement, but I do not find any reference of this contention before the Tribunal. Contrary to it, the objection raised before the Tribunal was that the legal heirs should have filed a separate application instead of giving an application in the running proceedings which was abated. I fail to see any justification or merits in this contention.

7. What for the separate application is required and what substance it would have and how it has caused prejudice to the petitioner, all these questions are not answered by the counsel for the petitioner. It is too technical approach in total ignorance of the fact that the legal heirs were none other than illiterate adivasis, villagers of remote rural area. When abatement is there of the revision application for nonfiling of the application within stipulated period, but for setting aside of the abatement an application has to be filed and I am of the opinion that such an application has to be dealt with and decided in the same file rather than to have a separate registration like C.A. or M.C.A.. This practice of filing of C.A. or M.C.A. has to be deprecated as it rather creates confusion, unnecessarily increasing the workload in the courts which are already having mounting arrears of pending cases and unnecessarily increasing the number of pending cases. It is an order of the nature which should be made in the main file itself. An application for interlocutory orders, which includes the order of setting aside of the abatement as well as bringing on record the legal heirs and representatives, has to be filed as an application in the main file itself and it should not have been given a separate number, like which we are giving in this Court. In many cases earlier, I have observed that this registration of the application for interlocutory orders as C.A. or M.C.A. creates numerous difficulties in the registry. It is a fact of which notice can be taken that thousands of applications, C.A. or M.C.A are pending in this court. A notice of the fact has also to be taken that this C.A. and M.C.A are being listed without the main file and the court passes order thereon. In deciding the C.A. or M.C.A. without main papers, the possibility of some wrong order cannot be overruled. The court may not have all the facts of the case before it. Otherwise also, I fail to see any justification, what for these applications are being separately registered. In fact, the course would have been and should have been that the application is filed in the main case itself giving out therein the provisions under which it has been filed and the relief prayed therein. This application should be kept and placed in the file itself. This is flagged and be placed before court for passing of necessary order along with the main papers. In this court, there is a procedure that C.A. and M.C.A are kept separately from the main file and not in the file itself. Even the court may not know of how many C.As. and M.C.As. have been filed in the Special Civil Application and what orders have been passed from time to time

thereon. There is no reference of filing of C.A. or M.C.A in the main file itself. This may sometime lead to a wrong decision. So this practice and the procedure rather creates difficulty in working of the registry as well as it consumes substantial time of the registry in dealing with the same, which is already engaged in looking after the heavy pendency of mounting arrears of cases, has to be given fresh thought. These applications are in furtherance of the main petition, filed for interlocutory orders therein. The order on this application should be recorded in main file itself so that at a glance the court may have the notice of applications as well as the orders passed thereon.

8. The argument which has been advanced by the learned counsel for the petitioner that separate application should have been filed deserves no acceptance. So far as the argument of the counsel for the petitioner that the legal heirs should have filed a separate application for setting aside of the abatement is concerned, it is suffice to say that there is no bar to file a composite application i.e. an application for bringing on record legal heirs as well as for setting aside the abatement. The application has been filed by the legal heirs giving out thereunder the reasons for delay made in filing thereof. In view of these facts, the only question for consideration of the Tribunal was whether there was sufficient cause which prevented the legal heirs from filing of the application in time or not. It is basically a discretion of the authority, here is the Tribunal, to consider and pass appropriate order and where on the basis of given facts, it has considered it to be a case where delay has to be condoned and the abatement has to be set aside, no interference should be made by this court sitting under Article 226 or 227 of the Constitution of India. It is a question of discretionary order and in the present case on the basis of given fact, the delay has been condoned and abatement has been set aside, it cannot be said that the Tribunal has acted arbitrarily or those were not the sufficient grounds on the basis of which the delay in filing of the application could not have been condoned and abatement could not have been set aside. It is settled law that in case where there being no failure of justice in a given case, the exercise of jurisdiction under Article 226 or 227 is not warranted. Any reference in this respect is needed then it may have to the decision of the Supreme Court in the case of A.M. Allison vs. B.L. Sen reported in AIR 1957 SC 227 and in the case of Balwant Rai vs. M.N. Nagrashna reported in AIR 1960 SC 407. In the matter of allowing the legal heirs on record in place

of a deceased party too technical and rigid approach should not be there. The approach should be to advance justice, which exactly has been done in the present case. The cases are to be decided on its own facts. The decisions on which the reliance is placed by the counsel for the petitioner are of little help in this case.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated.

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